

AREA EDUCATION AGENCY 7,
EDUCATION ASSOCIATION,

Petitioner,

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-VS-

IOWA PUBLIC EMPLOYMENT
RELATIONS BOARD,

Respondent.

AA 1902

RULING ON MOTION
TO DISMISS and ORDER

Area Education Agency 7, (AEA) and Respondent Iowa Public Employment Relations Board (PERB) move to dismiss the Petition for Judicial Review filed by Area Education Agency 7 Education Association (Association) for lack of jurisdiction. On April 30, 1992 hearing was held on the Motion. Counsel for Petitioner and Respondent appeared, as well as that of AEA.

The jurisdictional facts are essentially undisputed. AEA changed its health insurance carrier, allegedly unilaterally. The Association felt this constituted a prohibited practice as defined in Section 20.10, Iowa Code and filed a complaint with PERB. Evidentiary hearing was held September 20, 1990. On March 5, 1991 the Administrative Law Judge issued a Proposed Decision finding, for reasons not pertinent here, that the issue was not ripe for adjudication. The Association appealed to the full PERB which, on October 25, 1991 issued a decision affirming and modifying the Proposed Decision. AEA was a party of record before PERB. On November 22, 1991 the Association filed the pending Petition for Judicial Review. On the same day counsel for the Association mailed a copy of the Petition to the Chairman of PERB. PERB filed an Answer on December 13, 1991. On January 3, 1992 AEA filed the pending Motion to Dismiss citing failure of the Association to mail or serve the Petition on it, or its counsel, in the manner

required by Section 17A.19(2), Iowa Code. On January 7, 1992 counsel for the Association mailed a copy of the Petition to counsel for AEA. It did not mail or serve the Petition before that date, and the January 7 mailing was untimely. On January 9, 1992 Respondent PERB filed a Motion to Dismiss on the same ground urged by AEA.

The Statute provides:

"Within ten days after the filing of a petition for judicial review the petitioner shall serve by the means provided in the Iowa rules of civil procedure for the personal service of an original notice, or shall mail copies of the petition to all parties named in the petition and, if the petition involves review of agency action in a contested case, all parties of record in that case before the agency. Such personal service or mailing shall be jurisdictional. The delivery by personal service or mailing referred to in this subsection may be made upon the party's attorney of record in the proceeding before the agency."

Section 17A.19(2), Iowa Code. As noted in the statute, the notice procedures are jurisdictional. "Thus a failure to comply . . . deprives the district court of appellate jurisdiction over the case." Brown v. John Deere Waterloo Tractor Works, 423 N.W.2d 193, 194 (Iowa 1988). While reluctant to dismiss the Petition on a ground such as that urged here, after reviewing the cases the Court finds it is unable to make a principled distinction between the situation in this case and that in Record v. Iowa Merit Employment Department, 285 N.W.2d 169 (Iowa 1979). Like this case, in Record the petitioner mailed the petition to the agency from whose decision review was sought, but not the other party of record before the agency (Job Service), the action of which was

the subject of the administrative hearing. The Supreme Court affirmed dismissal for lack of jurisdiction because the petitioner failed to serve one of the parties of record as required by Section 17A.19(2). 285 N.W.2d at 172-73.

Referring to Brown, supra, and Monson v. Iowa Civil Rights Commission, 467 N.W.2d 230 (Iowa 1991) the Association argues it substantially complied with the notice provisions of Section 17A.19(2). Both cases hold that "substantial--not literal--compliance with section 17A.19(2) is all that is necessary to invoke the jurisdiction of the district court." Brown, supra, 423 N.W.2d at 194. See Monson, supra, 467 N.W.2d at 232. In Brown petitioner mailed notice two days before judicial review proceedings were instituted, and in Monson personal service was made two days late due to error on the part of the sheriff. 423 N.W.2d at 194; 467 N.W.2d at 232. Unlike these cases, in which Petitioner attempted to timely make service, no service at all was attempted on AEA until after it moved to dismiss long after the ten-day period. With respect to the requirement to mail notice to all parties of record in the contested case, there essentially was no compliance.

It is true no prejudice to AEA is shown by the lack of notice, it intervened within the intervention period. Moreover, as Petitioner asserts, AEA must have had actual notice of the filing of the Petition because it intervened to assert the pending Motion to Dismiss. The absence of prejudice, however,

becomes pertinent only if there first is a finding of substantial compliance. Brown, supra, 423 N.W.2d at 196. If there is no substantial compliance, the absence of prejudice is not material. Nor can the Court hold AEA's actual notice brings the case within the scope of substantial compliance. In Record the intervenor on whose motion the petition was dismissed also had actual notice and timely intervened. 285 N.W.2d at 171-72.

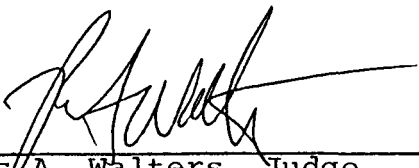
The Association also argues the proceedings before the agency were not a contested case and therefore AEA did not have to be served. The outcome of an agency proceeding - here a finding of unripeness - does not determine whether the proceeding is a contested case. The character of the proceedings is determinative. Here it is clear the PERB proceeding was a contested case. See Section 17A.2(2), 20.11(1), Iowa Code.

Compelled by statute and case precedent to find it lacks jurisdiction, the Court must grant the Motion.

Motion to Dismiss granted. The Petition in this cause is dismissed.

IT IS SO ORDERED.

Dated at Des Moines, Iowa this 11th day of May, 1992.



Ross A. Walters, Judge
Fifth Judicial District

Copy to:

Charles Gribble

Richard Ramsey

Steven A. Weidner

<u>METHOD OF DISPOSITION</u>	
_____	TRIAL TO JURY
_____	TRIAL TO COURT
_____	GUILTY/DEFAULT
<input checked="" type="checkbox"/>	DISMISSED/TRANSFERRED
_____	BY CLERK